

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	:	<b><u>Mail Stop: Petitions</u></b>
	:	
Toshifumi OTSUBO	:	Confirmation No. 3334
	:	
Serial No. 10/730,260	:	Group Art Unit: 3761
	:	
Filed: December 9, 2003	:	Examiner: Melanie Jo Hand
	:	

For: PANTS-TYPE DISPOSABLE WEARING ARTICLE

**PETITION FROM REQUIREMENT FOR RESTRICTION**  
**UNDER 37 CFR 1.144**

COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria VA 22313-1450

Sir:

Applicants hereby petition the Director to reconsider

- the Examiner’s decision<sup>1</sup> to withdraw claims 3, 6-14, 16, 18-21 and 24-29, as presented in the October 21, 2008 Amendment, from consideration.

In the Office Action of January 6, 2009, the Examiner raised the Restriction Requirement and withdrew claims 3, 6-14, 16, 18-21 and 24-29. In response, Applicants traversed the Restriction Requirement in the Amendment of April 6, 2009.

In the Office Communication of June 23, 2009, the Examiner confirmed<sup>2</sup> that the Restriction Requirement stands.

This Petition follows accordingly.

---

<sup>1</sup> See Office Communication mailed June 23, 2009 at page 2 and Office Action mailed January 6, 2009 at page 2.

<sup>2</sup> See Office Communication mailed June 23, 2009 at page 2, paragraph 1, lines 3-4.

The following reasons are offered for this request:

The Examiner's decision to withdraw claims 3, 6-14, 16, 18-21 and 24-29, as presented in the October 21, 2008 Amendment, from consideration is improper for the reasons discussed below.

1. Regarding claims 3, 6-14, 16, 18-21 and 28-29, the Examiner has failed to specify that there will be a serious burden if restriction is not required.<sup>3</sup> Thus, the Restriction Requirement is improper.

2. Applicants respectfully submit that there would be no serious burden on the Examiner if the restriction is not required, because claim 3, which was amended in the Amendment of October 21, 2008 to add the limitations of examined claims 17 and 22, has the features already examined on the merits in the Office Action of July 21, 2008.

The Examiner alleges that claim 3 as amended in the last action (the Amendment of October 21, 2008) does not recite subject matter previously examined. Applicants respectfully disagree with the Examiner.

Claim 3 (*Emphasis added*) is directed to a pants-type disposable wearing article, comprising:

(i) a longitudinal direction,  
a waist-surrounding direction orthogonal to said longitudinal direction,  
a chassis defining a front waist region, a rear waist region, a crotch region extending in said longitudinal direction between said front and rear waist regions, an elasticized waist-hole, and a pair of elasticized leg-holes,

an absorbent structure extending on an inner surface of said chassis between said front and

---

<sup>3</sup> See Office Action of June 15, 2009 at page 2, paragraph 1, line 9. See also MPEP 808 (Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why each invention as claimed is either independent or distinct from the other(s); and (B) the reasons why there would be a serious burden on the examiner if restriction is not required,

rear waist regions, and

a plurality of auxiliary elastic members secured to said chassis in a stretched state and extending in said waist surrounding direction so as to cross said absorbent structure in at least one of said front and rear waist regions, each of said auxiliary elastic members having, in said waist surrounding direction, opposite end portions and a middle portion located between said opposite end portions,

said opposite end portions being secured to said chassis in vicinities of transversely opposite side edges of the one of said front and rear waist regions while said middle portion being free of direct securement to said chassis in the one of said front and rear waist regions,

wherein

said chassis comprises an outer sheet and an inner sheet directly joined together at a plurality of joining sites;

said plurality of auxiliary elastic members are interposed between said outer and inner sheets;

said plurality of joining sites are distributed at least in an area of said absorbent structure in the one of front and rear waist regions, are spaced one from another by given space in said longitudinal direction and are located between the middle portions of said auxiliary elastic members;

(ii) each of said auxiliary elastic members is entirely free of direct attachment to said chassis except at the opposite end portions of said auxiliary elastic member; and

(iii) the joining sites are each in the form of a dot and comprise

first joining sites arranged in the longitudinal direction in a middle zone of the absorbent structure,

second joining sites arranged in the longitudinal direction on both sides of the first joining sites, and

---

i.e., the reasons for insisting upon restriction.) (emphasis added).

Serial No.: 10/730,260

third joining sites arranged in the longitudinal direction on both sides of the second joining sites and in the vicinity of the transversely opposite side edges of the absorbent structure.

It should be noted that limitations (ii) and (iii) of claim 3 are respectively corresponding to the limitations of claims 17 and 22 presented in the Amendment of June 12, 2008. And the limitations (ii) and (iii) which were recited in claims 17 and 22 were examined by the Examiner as clearly stated in the Office Action mailed July 21, 2008. That is, claim 3 which includes the examined limitations (ii) and (iii) has been examined by the Examiner.

Therefore, the invention of claim 3 has been examined and constructively elected, contrary to the Examiner's position.

Regarding claims 24-27, Applicants respectfully submit that claims 24-27 depend on elected claim 23, and should be considered by at least virtue of their dependency.

Accordingly, claims 3, 6-14, 16, 18-21 and 24-29 are all directed to constructively elected invention and should be examined in the instant application.

Serial No.: 10/730,260

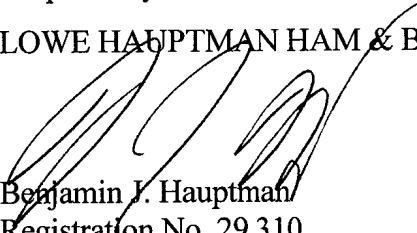
**Conclusion**

In view of the forgoing, Applicants, through their undersigned attorney, respectfully request that the Director compel the Examiner to examine claims 3, 6-14, 16, 18-21 and 24-29 which are clearly readable on the constructively elected invention that has been prosecuted through numerous Office Actions and Amendments.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

LOWE HAUPTMAN HAM & BERNER, LLP

A handwritten signature in black ink, appearing to read "Benjamin J. Hauptman", is written over the typed name and registration number.

Benjamin J. Hauptman  
Registration No. 29,310

USPTO Customer No. 22429  
1700 Diagonal Road, Suite 300  
Alexandria, VA 22314  
(703) 684-1111  
(703) 518-5499 Facsimile  
Date: July 23, 2009  
BJH/KL/CHY/ayw